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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

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NO. 79-6630

ALICE C. ROCHE, ET AL, Appellant

VS.

BIG MOOSE OIL FIELD TRUCK SERVICE, ET AL, Appellees

Appeal from the Supreme Court of Louisiana

Motion to Dismiss or Affirm

RAGGIO, CAPPEL, CHOZEN & BERNIARD
FREDERICK L. CAPPEL
Post Office Box 820
Lake Charles, Louisiana 70602

Attorneys for Appellees/ Defendants David Fite, L. J. Guidry, Clyde Wilbert Johnson, Fred Wilson and Liberty Mutual Insurance Company

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Opinion Below

The Supreme Court of Louisiana issued its opinion in this case on February 15, 1980, and it can be found at 381 So. 2d 396.

Application for rehearing was denied in this case on April 7, 1980, as is noted in the opinion of the Louisiana Supreme Court.

Motion to Dismiss or Affirm

Pursuant to United States Supreme Court Rule 16 (1), Appellee moves the Court to dismiss the appeal herein or in the alternative, to affirm the judgment of the Supreme Court of Louisiana on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

A.

The Statute

This appeal raises the constitutionality of the Louisiana "Wrongful Death Statute" (LSA - Civil Code 2315).

The statute provides that certain classes of people may recover damages for the wrongful death of a person who is killed through the fault of another person. The surviving spouse and child or children of the deceased are first entitled to this right. If the deceased left no spouse or child surviving, the surviving father and mother are entitled to recover. Lastly, if the deceased left no spouse, child or parents surviving, the deceased's surviving brothers and sisters are entitled to recover. The statute was amended in 1948 to include adopted children as beneficiaries. The statute was again amended in 1960 to its present form to provide that the word "Child" as used in the statute includes a child "by adoption." As the Louisiana Supreme Court stated, the issue on appeal to this court is whether the word "Child" also includes a child for whom a petition has been filed but whose adoption is not final.

B.

The Proceedings Below

Appellant, Alice C. Roche, and the decedent, Joseph Daniel Roche were married in 1968. They had no children of their own. In 1974 the Juvenile Court for the Parish of Calcasieu decreed William David Robinson and Dawn Rochelle Robinson to be abandoned and awarded custody to the Louisiana Health and Human Resources Administration for placement, in the best interests of the children. The children were placed in the home of Mr.

and Mrs. Roche by virtue of an order of the Fourteenth Judicial District Court, State of Louisiana, dated May 31, 1974. On November 19, 1975, Appellant, Alice C. Roche, and Joseph D. Roche applied for the adoption of the children in the Juvenile Court of Fifteenth Judicial District Court, State of Louisiana. The Division of Family Services filed its confidential report on the adoption request of Mr. and Mrs. Roche on December 19, 1975. Mr. Roche was killed on December 3, 1975, prior to the final decree of adoption on January 5, 1976.

As a result of Joseph D. Roche's death, Appellant, Alice C. Roche, instituted a wrongful death action individually as the natural tutrix of the minor children, who were at the time of filing of the suit, her adopted children. The action was instituted against Appellees pursuant to LSA-Civil Code 2315, the constitutionality of which is attacked herein. Appellees filed an exception as to the right of the two minor children to bring a wrongful death action pursuant to LSA-Civil Code 2315 since the final decree of adoption had not been given prior to the date Joseph D. Roche was killed. The Fifteenth Judicial District Court for the State of Louisiana, sustained this exception and dismissed the actions of the two minor children against Appellees.

This decision was affirmed by the Third Circuit Court of Appeals for the State of Louisiana, which opinion can be found at 371 So. 2d 1374 (1979).

The decision was also affirmed by the Supreme Court of Louisiana, which opinion can be found at 381 So.2d 396 (1980).

II.

ARGUMENT

The Case Presents No Substantial Question Not Previously Decided by This Court

Appellant attacks LSA-Civil Code 2315 on the basis that it arbitrarily, capriciously and unreasonably discriminates against the two hereinabove named minor children and thus does not equally protect them as set forth in the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

As stated by this Court in Weber vs. Aetna Casualty and Surety Company, 92 S.Ct. 1400 (1972), a state legislature is given great latitude in making classifications in the areas of social and economic legislation, and this Court requires that the statutory classification bear some rational relationship to a legitimate state purpose. And, when the state statutory classifications create suspect classes or deal with fundamental rights, this Court will examine the classification with stricter scrutiny. In either case, the essential inquiry is what legitimate state interests the classification promotes and what fundamental personal rights might the classification endanger.

In the instant case, the legitimate state interests which the classification promotes are two-fold. In the first place, Appellant would have every person who is a "dependent" of a person killed through the fault of another have a cause of action under the applicable statute. One reason the Louisiana Legislature chose not to word its Wrongful Death Statute in this manner is the serious problem the Louisiana courts would have in interpreting the word "dependent." For the sake of judicial consistency, the legislature chose to specifically enumerate those classes of people whom it felt should have a cause of action under the statute, instead of leaving the statute open to so much judicial interpretation, which would result with Appellant's theory.

Secondly, the Louisiana Legislature, while providing a cause of action under the statute for an adopted child, realized that an adoption is a creature of a legislative statute and that for the adoption to be valid, each and every of the statutory requirements, as enumerated by the legislature, should be strictly carried out. This was recognized by the Supreme Court of Louisiana in Roy Vs. Speer, 192 So. 2d 554 (La, 1966). Appellee contends that these two state purposes, judicial consistency and strict construction of its adoption law, are legitimate and that the classification in LSA-Civil Code 2315 does bear a rational relationship to the purpose.

Appellant has cited numerous cases wherein illegimate children, natural children and posthumous children have been allowed to recover for the wrongful death of their parent under Article 2315. Appellee concedes this fact, but points out that in these cases it was a blood relation of the decedent that was held to have rights under Article 2315. In the instant case, the children who seek to recover are not related by blood to the decedent but are instead being adopted. For this reason, these cases should be considered distinguishable and inapplicable.

The failure of LSA Civil Code 2315 to recognize as beneficiaries thereunder dependent minors undergoing adoption does not render the statute unconstitutional under the Equal Protection Clause. The classifications set forth in the statute by the Louisiana Legislature bear a rational relationship to several legitimate state purposes.

III.

CONCLUSION

Wherefore, appellee respectfully submits that the questions upon which this cause depend are so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of Louisiana.

RACGIO, CAPPEL, CHOZEN &
BERNIARD
FREDERICK L. CAPPEL
Post Office Box 820
Lake Charles, Louisiana 70601



FREDERICK L. CAPPEL